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THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

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6 JAN 1969

Honorable Dean Rusk
Secretary of State
Washington, D. C. 20520

Dear Dean:

In response to an inquiry from Len Meeker about a year ago, we have had the security implications of the continental shelf question under intensive review. It now appears that the thrust of international affairs as well as the terms of the 1958 Geneva Convention will require a review of the U.S. position on the outer limit of the continental shelf in the very near future. Therefore, it appears timely to send you the Department of Defense view of this subject, developed in coordination with the Joint Chiefs of Staff.

Briefly, our view is the following. First, a continental shelf regime limited to the 200 meter isobath would be the most compatible with our national security interests. Second, if some alternative is required, we would prefer some limit [REDACTED]. Third, no continental shelf regime [REDACTED] should be considered. Fourth, regardless of where the outer limit of the continental shelf is fixed, there must be a clear reaffirmation of the continued freedom of the superjacent waters and air space beyond the limit of the territorial sea.

The interests of the United States would be best served if the territorial seas and straits questions were settled before any international agreement is reached on defining the outer limit of the continental shelf.

Attached is a short paper which sets forth the principal concerns which have influenced our views.

Sincerely,

Paul

Enclosure
Department of Defense View on the
Continental Shelf and Related Issues

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PA/HO, Department of State
E.O. 12958, as amended
Date: 12/8/2006

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Deane Rusk
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~~SECRET~~DEPARTMENT OF DEFENSE VIEW ON THE CONTINENTAL SHELF AND RELATED ISSUES

The protection of U.S. national security requires that, to the extent it is possible to do so, large areas of sea and air space be preserved free for military uses. In order to maintain the highest possible degree of flexibility for military activities the DOD has traditionally opposed the extension of national sovereignty beyond the three-mile territorial sea and the superjacent air space. However, the U.S. position with respect to maximum freedom to use the sea and air space has been eroded to the point where, at this moment,

Decisions which caused this erosion (e.g., in Indonesia, Peru, Ecuador, the Soviet Union, Communist China, and elsewhere) may appear, in any given case, to have been the exercise of practical and intelligent options. Unfortunately, in the aggregate and over time, these decisions have worked a change in international law to the detriment of our national security. It would appear that to a great extent, this erosion was made possible by our failure to provide sufficiently visible manifestations of the assertion of our legal rights following the failure of the Geneva Law of the Sea Convention to agree on a territorial sea limit eleven years ago. The U.S. is just now beginning to experience the full impact of that failure.

Nor is the DOD any longer able to take comfort in the assurance, such as that given when the United States established a special jurisdictional zone claiming exclusive fishing jurisdiction, that zones of limited jurisdiction will remain limited in character. It appears that this can only hold true when (1) the zone of limited jurisdiction fully accomplishes the purpose for which it was established (i.e.: is not a compromise zone with competitive interests laboring to alter its character) and (2) the zone is established multilaterally with clear and precise protections for those interests which we do not want subjected to national or international jurisdiction.

The process of erosion which the U.S. has suffered with respect to the regime of law applicable to territorial seas very probably would not have occurred if the world had agreed on a territorial sea limit adequate to the economic and defense needs of most states and, in addition, had agreed positively to a regime of continued freedom of the seas for all other activities. It follows therefore that, in the absence of a relatively universal agreement on a single territorial sea limit and on freedom of transit through and over straits, the DOD position on the continental shelf issues must, of necessity, be influenced by the possibility of collateral effects on the superjacent waters and air space.

With respect to the seabeds and deep ocean floor beyond national jurisdiction the Department of Defense has agreed to the U.S. proposing that the Eighteen Nation Disarmament Committee be asked to take up the question of arms control on the seabed with a view to defining those factors vital to a workable, verifiable and effective international agreement which would prevent the use of this new environment for the emplacement of weapons of mass destruction. Such a study would not place the U.S.

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national security in undue jeopardy. However, a general prohibition against military activities on the seabed and ocean floor beyond the outer boundary of the continental shelf would make necessary and mandatory a thorough re-evaluation, from a national defense standpoint, of the most favorable shelf outer boundary. Assuming that no such general prohibition against military activity is agreed to, it is possible to state the Department of Defense views on the continental shelf.

From a national security point of view no particular defense requirements are foreseen which would cause this Department to urge broadening the continental shelf beyond the narrowest possible limit, in this case the 200 meter depth curve. Moreover, it is considered that under the existing circumstances any extension of the continental shelf beyond a 200 meter limit could degrade the U.S. national security. Under present international pressures, for example, a wider continental shelf can only give rise to claims which will have the effect of placing larger areas of the ocean bottom under national sovereignty, thereby subjecting our seabed activities to coastal state control. This can be expected to result in larger areas of the superjacent waters eventually being placed under increasing coastal state control. As was pointed out above, this problem would be reduced in severity if international agreement on limits of territorial waters and the freedom of transit through and over straits were to be achieved.

Although the Department of Defense would prefer the 200 meter line and considers it to be the most desirable outer limit, if overriding considerations require that a compromise position be offered, it is felt that a limit [REDACTED] coupled with reaffirmation of the principle of freedom of the high seas in superjacent waters and air space, would not have excessively degrading effects on national security. However, if other U.S. government departments and users propose limits to the continental shelf beyond the 200 meter depth curve they should be asked to demonstrate that these overriding interests and activities will generate real values which would be unobtainable to the nation without some wider limit.

[REDACTED] will be in serious jeopardy under any conceivable regime in which control is exercised by a nation, state or international organization no matter how limited the purpose of that control. For technical reasons [REDACTED]

Some legal regimes can be suggested which would create less interference with this defensive system than others. Nonetheless, from a Department of Defense standpoint, it is much more important for the Department of State to be aware that, unless a decision is made to forego this defensive system, it would not be possible for this Department to recommend that the United States encourage, sign or ratify a treaty which could have

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the effect of degrading this system. It does not appear that it will be adequate to have appropriate language included in the travaux preparatoires nor to rely on complex constructions placed on existing treaties for the protection of the U.S. right to install and use this system. If the continental shelf limit were to be extended [REDACTED] the national security interests would require that the U.S. obtain substantially worldwide agreement that no state may impair the freedom of military use of its continental shelf by foreign nations. Such a widespread agreement appears highly unlikely. Therefore, the United States should forego any consideration of a continental shelf limit beyond the [REDACTED].

A variety of regimes for the seabed and deep ocean floor have been suggested in both the international and interagency communities. These involve schemes for the exercise of sovereignty out to 2500 meters or, at the other extreme, plans for international ownership of the ocean bottoms up to the boundary of continental shelf jurisdiction. This Department cannot evaluate which, if any, of these regimes would be in the acceptable group in advance of knowing their details. It is obvious, however, that regimes affording the least jurisdiction and control would be the most compatible with the U.S. national security interest.

To the extent that United States deliberations on a legal regime for the seabed and deep ocean floor involve considerations of jurisdictional control beyond [REDACTED] that control must be carefully circumscribed so as to make impossible any construction which would permit interference with the high seas character of the superjacent waters and air space, or with military uses of the seabed. This, of course, refers only to those military uses which are consistent with an arms control agreement, if and when such an agreement comes into being. It is also recognized that such military uses could not unreasonably interfere with other lawful activities.

It is therefore concluded that, first, a continental shelf regime limited to the 200 meter isobath is the most preferable from the DOD point of view. Second, if some alternative is required, Defense would prefer some limit between [REDACTED] Third, no continental shelf regime [REDACTED] should be considered. Fourth, regardless of where the outer limit of the continental shelf is fixed, there must be a clear reaffirmation of the continued freedom of the superjacent waters and air space beyond the limit of the territorial sea.

It is considered that the establishment of a boundary governing the extent of jurisdiction of coastal states on exploration and exploitation of resources of the continental shelf, before an agreement is reached on the limits of territorial seas and on guaranteed passage through and over international straits, would adversely affect the interests of the United States. Other nations would tend to accept this "first agreed boundary" as a boundary for full national sovereignty. Since this would place serious restrictions on military operations, the Department of Defense believes that the territorial seas and straits questions should be settled before any agreement is reached on defining the outer limit of the continental shelf. This does not preclude simultaneous consideration of both questions.

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